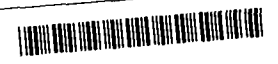




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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



01-14-2002

U.S. Patent & TMO's/TM Mail Rcpt Dt. #67

INEOS Silicas Limited,

Opposer,

v.

Blaise McArdle

Applicant.

Opposition No. 124,540
Application Serial No.
76/085639 for the mark
MICROSAL

Honorable Commissioner of Patent and Trademarks
Washington, D.C. 20231

Sir:

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER
AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant, Blaise McArdle, respectfully requests that Opposer, INEOS Silicas Limited, answer under oath the following interrogatories and produce the following documents and things for inspection and copying at the offices of EPSTEIN, EDELL, SHAPIRO, FINNAN & LYTLE, LLC, 1901 Research Boulevard Suite 400, Rockville, Maryland 20850, within thirty (30) days after service hereof. These requests are deemed to be continuing, so as to require prompt production of additional documents and supplemental interrogatory answers should Opposer obtain additional responsive information or documents between the time the answers are served and the time of the final hearing of this opposition proceeding.

I. DEFINITIONS AND INSTRUCTIONS

A. The term "Opposer" means INEOS Silicas Limited, and its assigns, predecessors-in-interest, parents, subsidiaries and related organizations, all licensees, franchises and the officers, directors, employees, agents and representatives thereof.

B. The term "document" includes, but is not limited to, all writings correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, publications, catalogs, labels, displays, photographs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, work sheets and other storage means by which information is retained in retrievable form, and all other materials whether printed, typewritten, handwritten recorded or reproduced by a mechanical or electronic process.

C. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and information which might be construed to be outside their scope.

D. The term "identify" when used in connection with a natural person or persons, requires statements of the person's full name and last known business and residential address and telephone number.

E. The term "identify" when used in connection with a document requires the following to be furnished:

(i) Furnish the name, date and general description (e.g. letter, memorandum, etc.) of the document, the name and address of the person originating the document, the name and address of the persons to whom the document was addressed or delivered, and the names and addresses of all persons to whom copies of the document were sent; and

(ii) State whether Opposer is in possession of the original of the document or a copy thereof, and, if Opposer is not in possession of the original or a copy, furnish the name and address of the custodian of the original or a copy, and

(iii) Furnish a general description of the subject matter to which the document pertains.

F. The term "identify" when used in connection with a company, organization or other business entity, requires statement of the name and address of the company, organization or other business entity.

G. The term "the Applicant's mark" means the mark MICROSAL shown in trademark application Serial No. 76/085,639 filed on July 10, 2000.

H. The term "Opposer's mark" means MICROCAL.

I. The term "Applicant's application" means application Serial No. 76/085,639.

J. The term "relate to" as used herein shall mean contain, record, discuss, mention, note, evidence, memorialize, analyze, describe, comment upon, or refer to the matters set forth.

K. The term "date" as used herein means the exact day, month, and year, if ascertainable, or, if not, the best approximation (including relationships to other events).

L. The word "things" as used herein includes any tangible item or object other than a document regardless of privilege and whether or not is it within Opposer's possession, custody or control.

M. The word "person" as used herein includes individuals and any business entities including but not limited to associations, partnerships and corporations.

N. The term "identify" when used in connection with an oral communication means to state its date, the communicator(s)' names and addresses, the communicatee(s)' names and addresses, and a brief description of its subject matter.

O. With respect to each document requested herein which Opposer contends is privileged or otherwise excludable from discovery, state the basis for the privilege or other grounds for exclusion, the name and address of the author and the addressee, the date, the general subject matter, the name and address of every recipient of the original or any copy of the document, the identification and location of the files where the original and each copy are normally kept.

P. If Opposer knows of any document requested but cannot produce it, so state, and give the particular reasons for your inability, and identify every person who you believe has possession, custody or control of the document.

Q. Where a document is requested to be produced, the entire document, along with all attachments, appendices and exhibits, is to be produced.

R. All non-identical copies of documents requested are to be produced.

S. A written response to the request for documents is required pursuant to Federal Rule 34.

T. If any document requested in any of the document requests is not produced or is withheld for any reason, supply the following information separately for each document:

1. author(s), title(s), recipient(s), type of document (letter, Memorandum, etc.), general subject matter, date, and number of pages;

2. name and job description of each individual to whom the contents of the documents have been communicated;

3. identification as in paragraph (a) of each document transmitted with or attached to the document withheld;

4. whether any business or non-legal matter is contained or discussed in the document, together with the description of any subject matter; and

5. the paragraph(s) of the request(s) hereinbelow that require(s) the production of the document.

II. INTERROGATORIES

INTERROGATORY NO. 1

Identify by weight, to the nearest ton, the total amount of products sold or otherwise distributed worldwide under Opposer's MICROCAL mark for each year since Opposer began using that mark in the 1960's as alleged in paragraph 2 of the notice of Opposition, and identify all documents pertaining to such sales.

INTERROGATORY NO. 2

A. Identify to the nearest ton the total amount of products sold or otherwise distributed in the United States under Opposer's MICROCAL mark for each year since Opposer began selling products under that mark in the United States;

B. Identify the total number of individual transactions of products sold or otherwise distributed in the United States under Opposer's MICROCAL mark for each year since Opposer began selling products under that mark in the United States; and

C. Identify all documents pertaining to the sales and distributions described in section A and B of this Interrogatory.

INTERROGATORY NO. 3

Identify all advertising expenditures associated with Opposer's mark for the five years immediately prior to July 10, 2000, the filing date of Applicant's application, for advertising or promotion that appeared in the United States.

INTERROGATORY NO. 4

Identify the date of first distribution of products under the Opposer's mark in the United States and all documents pertaining to that distribution.

INTERROGATORY NO. 5

Identify each instance of actual confusion between the source of Opposer's goods or services bearing Opposer's mark and the source of Applicant's promotional materials or goods

bearing Applicant's mark, and for each such instance, identify the persons so confused, the date, place and circumstances of such instances, and the manner in which Opposer received notice of such instances.

INTERROGATORY NO. 6

Explain why Opposer has not registered or filed an application to register the MICROCAL mark in the United States, identify all documents relating to Opposer's consideration of filing a registration application for MICROCAL in the United States, and identify all discussions between Opposer's personnel and agents relating to consideration given to filing a registration application for MICROCAL in the United States.

INTERROGATORY NO. 7

Identify the names and addresses of any other businesses known to Opposer that sell additives to salts or food products under the name MICROCAL in the United States.

INTERROGATORY NO. 8

Identify all litigation, interferences, conflicts, oppositions, cancellation proceedings or any other *inter parte* proceedings in which Opposer's mark is or has been involved or relied on, and identify each document and things relating thereto, the persons having knowledge of the facts and documents relating thereto, and the persons having custody of any such documents and things relating thereto.

INTERROGATORY NO. 9

Describe when and how Opposer first became aware of Applicant's mark, including the circumstances giving rise to or surrounding such knowledge, and identify all persons having knowledge of the facts and all documents referring, mentioning or relating to such knowledge.

INTERROGATORY NO. 10

Identify all persons involved in the decision by Opposer to oppose registration of Applicant's mark.

INTERROGATORY NO. 11

Identify all persons participating in any market survey or any business survey of any kind (including the nature of such survey) with respect to Opposer's mark or Applicant's mark or with respect to the goods or services of the respective parties involved in this proceeding, and also identify in detail such surveys, as well as any documents connected with, mentioning, referring or relating to such surveys.

INTERROGATORY NO. 12

Identify all persons that Opposer intends to depose or use the testimony of in the present Opposition proceeding and provide a brief synopsis of the testimony to be obtained.

III. DOCUMENT PRODUCTION REQUESTS

Pursuant to Rule 34, Federal Rules of Civil Procedure, Applicant requests that Opposer produce for inspection and copying the following documents and things at the offices of EPSTEIN, EDELL, SHAPIRO, FINNAN & LYTLE, LLC, 1901 Research Boulevard, Suite 400, Rockville, Maryland 20850.

Opposer is also requested to order and label the materials in accordance with the final paragraph of Rule 34(b) Fed. R. Civ. P. Photocopies of the documents may be produced in lieu of the originals, but copies of all non-identical copies are to be produced.

1. All documents and things requested to be identified or described in Applicant's Interrogatories served herewith and all documents identified or described in response thereto.
2. Representative documents which relate or refer to the method of marketing or to a proposed method of marketing of services and products by Opposer under Opposer's mark.
3. Representative documents which relate or refer to the advertising or promotion of products in the United States by Opposer under Opposer's mark.

4. All documents which relate or refer to any assignment, license, or other transfer of any rights in Opposer's mark.

5. All documents relating or referring to any likelihood of confusion, mistake or deception, or any actual confusion, mistake or deception between Opposer's marks individually or collectively and Applicant's mark.

6. All documents including, but not limited to, advice, opinions, surveys, studies, or similar matters which relate or refer to Opposer's mark or Applicant's mark.

7. All documents which relate or refer to the use by anyone other than the present parties of MICROCAL or any mark deemed by Opposer to be confusingly similar to MICROCAL.

8. All documents which relate or refer to the first use of Opposer's MICROCAL mark in the United States.

9. All documents which relate or refer to the amount of consideration given in relation to the first use in the United States of Opposer's MICROCAL mark.

10. All documents which relate or refer to the use by anyone other than the present parties of any mark including/comprising the term MICROCAL for additives to salts and food products.

11. All documents identifying any publications in which Opposer has advertised, is advertising and has planned to advertise any and all of its products sold under Opposer's MICROCAL mark occurring over the 5 years previous to July 10 2000.

12. All documents relating to all Federal, State and common law searches conducted by or on behalf of Opposer relating to the MICROCAL mark.

13. All documents referring to or relating to Opposer's channels of distribution for products under Opposer's MICROCAL mark prior to July 10, 2000.

14. All documents referring to or relating to the class of purchaser of Opposer's products sold under Opposer's MICROCAL mark.

15. All documents related to the filing and prosecution of trademark registration applications for Opposer's MICROCAL marks in Austria, Australia, Benelux, Germany, Spain, Finland, France, Greece, India, Italy, Sri Lanka, Malaya, Sabah and Srawak (Malaysia), Norway, New Zealand, Pakistan, South Africa and the U.K.

16. All documents in Opposer's possession which refer or relate to Applicant or Applicant's mark.

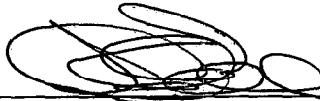
17. All documents referring to or relating to advertising agencies, public relations firms and other businesses Opposer has retained in connection with the advertising and promotion of goods in the United States bearing Opposer's MICROCAL mark.

18. All documents relating to Opposer's "using the MICROCAL mark since the 1960's in relation to the chemical industry for use as free-flow and anti-caking agents" as alleged in the Notice of Opposition.

19. All specimens (i.e., labels, tags, portions of packages, etc.) bearing Opposer's MICROCAL mark in connection with goods sold or otherwise distributed in the United States during the five years immediately preceding Applicant's July 10, 2000 filing date.

20. All documents that Opposer will or intends to place in evidence in the present Opposition proceeding.

EPSTEIN, EDELL, SHAPIRO, FINNAN & LYTLE, LLC



Ira C. Edell, Esq.
Attorney for Applicant


Epstein, Edell, Shapiro, Finnann & Lytle, LLC
1901 Research Boulevard, Suite 400
Rockville, Maryland 20850-3164
Tel. (301) 424-3640
Fax. (301) 762-4056
Date: January 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS has this day been sent to Opposer's attorney by first-class mail, postage prepaid, addressed as follows:

Wm. Bruce Day, Esq.
Swanson Midgley, LLC
2429 Pershing, Suite 400
Kansas City, MO 64108

Dated: JANUARY 14 2001


Ira C. Edell